

HOUSE BILL 76

N1
HB 984/11 – ENV

2lr0403

By: **Delegate Braveboy**
Introduced and read first time: January 17, 2012
Assigned to: Environmental Matters

A BILL ENTITLED

1 AN ACT concerning

2 **Real Property – Common Ownership Communities – Dispute Settlement**
3 **Mechanism**

4 FOR the purpose of altering the application of a certain dispute settlement mechanism
5 under the Maryland Condominium Act; establishing a certain dispute
6 settlement mechanism under the Maryland Homeowners Association Act;
7 requiring a governing body of a homeowners association to follow certain
8 procedures before imposing a sanction for a rule violation; authorizing a certain
9 action for damages or injunctive relief under certain circumstances; establishing
10 that the failure of the governing body of a homeowners association to enforce
11 certain provisions is not a waiver of the right to enforce a provision; providing
12 for the application of this Act; making stylistic changes; and generally relating
13 to the Maryland Condominium Act, the Maryland Homeowners Association Act,
14 and common ownership community dispute settlement procedures.

15 BY repealing and reenacting, with amendments,
16 Article – Real Property
17 Section 11–113
18 Annotated Code of Maryland
19 (2010 Replacement Volume and 2011 Supplement)

20 BY adding to
21 Article – Real Property
22 Section 11B–111.7
23 Annotated Code of Maryland
24 (2010 Replacement Volume and 2011 Supplement)

25 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
26 MARYLAND, That the Laws of Maryland read as follows:

27 **Article – Real Property**

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 11–113.

2 (a) [Unless the declaration or bylaws state otherwise, the] **THE** dispute
3 settlement mechanism provided by this section is applicable to complaints or demands
4 formally arising on or after [January 1, 1982] **OCTOBER 1, 2012**.

5 (b) The council of unit owners or board of directors may not impose a fine,
6 suspend voting, or infringe upon any other rights of a unit owner or other occupant for
7 violations of rules until the following procedure is followed:

8 (1) Written demand to cease and desist from an alleged violation is
9 served upon the alleged violator specifying:

10 (i) The alleged violation;

11 (ii) The action required to abate the violation; and

12 (iii) **1. [A] IF A VIOLATION IS A CONTINUING ONE, A** time
13 period, not less than 10 days, during which the violation may be abated without
14 further sanction[, if the violation is a continuing one,]; or

15 **2. IF THE VIOLATION IS NOT CONTINUING,** a
16 statement that any further violation of the same rule may result in the imposition of
17 sanction after notice and hearing [if the violation is not continuing].

18 (2) **(I)** Within 12 months of the demand, if the violation continues
19 past the period allowed in the demand for abatement without penalty or if the same
20 rule is violated subsequently, the board serves the alleged violator with written notice
21 of a hearing to be held by the board in session.

22 **(II)** The notice shall contain:

23 [(i)] **1.** The nature of the alleged violation;

24 [(ii)] **2.** The time and place of the hearing, which time may be
25 not less than 10 days from the giving of the notice;

26 [(iii)] **3.** An invitation to attend the hearing and produce any
27 statement, evidence, and witnesses on [his or her] **THE ALLEGED VIOLATOR'S** behalf;
28 and

29 [(iv)] **4.** The proposed sanction to be imposed.

30 (3) **(I)** A hearing occurs at which the alleged violator has the right
31 to present evidence and present and cross-examine witnesses.

1 (II) The hearing shall be held in executive session pursuant to
2 this notice and shall afford the alleged violator a reasonable opportunity to be heard.

3 (III) Prior to the effectiveness of any sanction hereunder, proof of
4 notice and the invitation to be heard shall be placed in the minutes of the meeting.

5 (IV) This proof shall be deemed adequate if a copy of the notice,
6 together with a statement of the date and manner of delivery, is entered by the officer
7 or director who delivered the notice.

8 (V) The notice requirement shall be deemed satisfied if the
9 alleged violator appears at the meeting.

10 (VI) The minutes of the meeting shall contain a written
11 statement of the results of the hearing and the sanction, if any, imposed.

12 (4) A decision pursuant to these procedures shall be appealable to the
13 courts of Maryland.

14 (c) **(1)** If any unit owner fails to comply with this title, the declaration, or
15 bylaws, or a decision rendered pursuant to this section, the unit owner may be sued for
16 damages caused by the failure or for injunctive relief, or both, by the council of unit
17 owners or by any other unit owner.

18 **(2)** The prevailing party in any such proceeding is entitled to an award
19 for counsel fees as determined by court.

20 (d) The failure of the council of unit owners to enforce a provision of this
21 title, the declaration, or bylaws on any occasion is not a waiver of the right to enforce
22 the provision on any other occasion.

23 **11B-111.7.**

24 **(A) THE DISPUTE SETTLEMENT MECHANISM PROVIDED BY THIS**
25 **SECTION IS APPLICABLE TO COMPLAINTS OR DEMANDS FORMALLY ARISING ON**
26 **OR AFTER OCTOBER 1, 2012.**

27 **(B) THE GOVERNING BODY OF A HOMEOWNERS ASSOCIATION MAY NOT**
28 **IMPOSE A FINE, SUSPEND VOTING, OR INFRINGE ON ANY OTHER RIGHTS OF A**
29 **LOT OWNER FOR VIOLATIONS OF RULES UNTIL THE FOLLOWING PROCEDURE IS**
30 **FOLLOWED:**

31 **(1) WRITTEN DEMAND TO CEASE AND DESIST FROM AN ALLEGED**
32 **VIOLATION IS SERVED ON THE ALLEGED VIOLATOR SPECIFYING:**

- 1 **(I) THE ALLEGED VIOLATION;**
- 2 **(II) THE ACTION REQUIRED TO ABATE THE VIOLATION; AND**
- 3 **(III) 1. IF THE VIOLATION IS A CONTINUING ONE, A TIME**
4 **PERIOD, NOT LESS THAN 10 DAYS, DURING WHICH THE VIOLATION MAY BE**
5 **ABATED WITHOUT FURTHER SANCTION; OR**
- 6 **2. IF THE VIOLATION IS NOT CONTINUING, A**
7 **STATEMENT THAT ANY FURTHER VIOLATION OF THE SAME RULE MAY RESULT IN**
8 **THE IMPOSITION OF SANCTION AFTER NOTICE AND HEARING.**
- 9 **(2) (I) WITHIN 12 MONTHS OF THE DEMAND, IF THE**
10 **VIOLATION CONTINUES PAST THE PERIOD ALLOWED IN THE DEMAND FOR**
11 **ABATEMENT WITHOUT PENALTY OR IF THE SAME RULE IS VIOLATED**
12 **SUBSEQUENTLY, THE GOVERNING BODY OF THE HOMEOWNERS ASSOCIATION**
13 **SERVES THE ALLEGED VIOLATOR WITH WRITTEN NOTICE OF A HEARING TO BE**
14 **HELD BY THE GOVERNING BODY IN SESSION.**
- 15 **(II) THE NOTICE SHALL CONTAIN:**
- 16 **1. THE NATURE OF THE ALLEGED VIOLATION;**
- 17 **2. THE TIME AND PLACE OF THE HEARING, WHICH**
18 **TIME MAY BE NOT LESS THAN 10 DAYS FROM THE GIVING OF THE NOTICE;**
- 19 **3. AN INVITATION TO ATTEND THE HEARING AND**
20 **PRODUCE ANY STATEMENT, EVIDENCE, AND WITNESSES ON THE ALLEGED**
21 **VIOLATOR'S BEHALF; AND**
- 22 **4. THE PROPOSED SANCTION TO BE IMPOSED.**
- 23 **(3) (I) A HEARING OCCURS AT WHICH THE ALLEGED VIOLATOR**
24 **HAS THE RIGHT TO PRESENT EVIDENCE AND PRESENT AND CROSS-EXAMINE**
25 **WITNESSES.**
- 26 **(II) THE HEARING SHALL BE HELD IN ACCORDANCE WITH**
27 **THIS NOTICE AND SHALL AFFORD THE ALLEGED VIOLATOR A REASONABLE**
28 **OPPORTUNITY TO BE HEARD.**

1 **(III) PRIOR TO THE EFFECTIVENESS OF ANY SANCTION,**
2 **PROOF OF NOTICE AND THE INVITATION TO BE HEARD SHALL BE PLACED IN THE**
3 **MINUTES OF THE MEETING.**

4 **(IV) THIS PROOF SHALL BE DEEMED ADEQUATE IF A COPY**
5 **OF THE NOTICE, TOGETHER WITH A STATEMENT OF THE DATE AND MANNER OF**
6 **DELIVERY, IS ENTERED BY THE OFFICER OR DIRECTOR WHO DELIVERED THE**
7 **NOTICE.**

8 **(V) THE NOTICE REQUIREMENT SHALL BE DEEMED**
9 **SATISFIED IF THE ALLEGED VIOLATOR APPEARS AT THE MEETING.**

10 **(VI) THE MINUTES OF THE MEETING SHALL CONTAIN A**
11 **WRITTEN STATEMENT OF THE RESULTS OF THE HEARING AND THE SANCTION, IF**
12 **ANY, IMPOSED.**

13 **(4) A DECISION IN ACCORDANCE WITH THESE PROCEDURES**
14 **SHALL BE APPEALABLE TO THE COURTS OF MARYLAND.**

15 **(C) (1) IF ANY LOT OWNER FAILS TO COMPLY WITH THIS TITLE, THE**
16 **DECLARATION, OR BYLAWS, OR A DECISION RENDERED IN ACCORDANCE WITH**
17 **THIS SECTION, THE LOT OWNER MAY BE SUED FOR DAMAGES CAUSED BY THE**
18 **FAILURE OR FOR INJUNCTIVE RELIEF, OR BOTH, BY THE GOVERNING BODY OF**
19 **THE HOMEOWNERS ASSOCIATION OR BY ANY OTHER LOT OWNER.**

20 **(2) THE PREVAILING PARTY IN ANY SUCH PROCEEDING IS**
21 **ENTITLED TO AN AWARD FOR COUNSEL FEES AS DETERMINED BY COURT.**

22 **(D) THE FAILURE OF THE GOVERNING BODY OF A HOMEOWNERS**
23 **ASSOCIATION TO ENFORCE A PROVISION OF THIS TITLE, THE DECLARATION, OR**
24 **BYLAWS ON ANY OCCASION IS NOT A WAIVER OF THE RIGHT TO ENFORCE THE**
25 **PROVISION ON ANY OTHER OCCASION.**

26 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall be
27 construed to apply only prospectively and may not be applied or interpreted to have
28 any effect on or application to any complaint or demand arising before the effective
29 date of this Act.

30 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect
31 October 1, 2012.